

## **REMARKS**

Applicant acknowledges with appreciation the Examiner's indication of allowable subject matter in the present application. In order to place the present application in condition for allowance, present claims 1, 7, and 10 have been amended; claims 4-6, 8-9, and 13-27 have been canceled without prejudice.

Applicant's invention discloses externally detectable electronic article surveillance markers which are attached to surgical implements, such as sponges and surgical instruments, appointed for use in a surgical wound. The attachment mechanism facilitates detection by an external interrogating field before the wound has been closed and the patient has left the operating table. The markers are responsive to the imposition of an interrogating field produced by an electronic article surveillance system. Use of the attachment mechanism and markers assure that the surgical implements are reliably detected and removed before completion of the surgical procedure. This technique eliminates the not infrequent mishap in which an implement is undiscovered at the time of surgery and remains indefinitely within the surgical cavity, often entailing dire consequences to the patient.

It is noted with appreciation the Examiner's indication that claims 4, 7, and 14 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Accordingly, claim 1 has been amended to incorporate all of the limitations of dependent claim 4. Claim 1, as amended, discloses a surgical sponge system, comprising: (i) a surgical sponge having a pocket for receiving a remotely detectable electronic marker; (ii) a flap for closing said pocket, said flap having

at least one side hingedly attached to said surgical sponge; (iii) fastening means for closing and securing said flap to said surgical sponge in the closed position, wherein said fastening means comprises a first snap in said flap and a second snap in said sponge, said first and second snaps being mutually engageable; and (iv) a remotely detectable electronic marker inserted within said flap. Claim 1, as amended, as well as claims 2-3, dependent thereon, patentably define over the cited art.

Claim 7 has been rewritten in independent form, incorporating the limitations of base claim 1. Claim 7, as amended, discloses a surgical sponge system, comprising: (i) a surgical sponge having a pocket for receiving a remotely detectable electronic marker; (ii) a flap for closing said pocket, said flap having at least one side hingedly attached to said surgical sponge; (iii) fastening means for closing and securing said flap to said surgical sponge in the closed position, wherein said fastening means comprises a hook and loop fastening system having a hook portion and a loop portion, one of said hook portion and said loop portion being affixed to said flap and the other of said hook portion and said loop portion being affixed to said sponge, said hook portion and said loop portion being positioned for mutual engagement; and (iv) a remotely detectable electronic marker inserted within said flap.

Claim 10 has been amended to incorporate all of the limitations of dependent claim 14. Claim 10, as amended, discloses a surgical sponge system, comprising: (i) a surgical sponge; (ii) a remotely detectable, magnetomechanically resonant electronic marker; and (iii) attachment means for attaching said marker to a surface of said surgical sponge, wherein said attachment means comprises a hook and loop fastening system comprising a hook portion and a loop portion, one of said hook portion and said loop


portion being affixed to said marker and the other of said hook portion and said loop portion being affixed to said surgical sponge.

It is submitted that present claims 1-3, 7, and 10-12 patentably define over the art of record. Namely, the prior art of record fails to disclose an attachment or fastening means comprising a snap system or a hook-and-loop fastening system. Snap and hook-and-loop systems provide a releasable and resealable means of attachment. Therefore, the prior art of record does not fairly teach or suggest the claimed invention as defined by present claims 1-3, 7, and 10-12.

### Conclusion

In view of the amendments to the claims and the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Reconsideration of the rejection of claims 1-3, 5-6, 8-13, and 15-27, and allowance of this application, as amended, are earnestly solicited.

Respectfully submitted,  
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